

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to)	Case No. D1-94-40897
Revoke Probation of:)	OAH No. L-1999010055
)	
CHARLES JOHNSON, M.D.)	
503 North Oakland Ave.)	
Pasadena, CA 91101-1111)	
)	
Physician's and Surgeon's)	
Certificate No. G 69296,)	
)	
<u>Respondent.</u>)	


DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on December 17, 1999.

IT IS SO ORDERED November 17, 1999.

MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
IRA LUBELL, M.D.
President
Division of Medical Quality

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Revoke Probation of:)	
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CHARLES JOHNSON, M.D.,)	
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Pasadena, CA 91101-1111,)	
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No. G-69296,)	
)	
Respondent.)	
_____)	

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, on May 3, 1999. Complainant was represented by Deputy Attorney General Beth Faber Jacobs. Respondent Charles Johnson, M.D., was present and represented himself.

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge makes the following findings:

FINDINGS OF FACT

1. The Administrative Law Judge takes official notice that, on October 26, 1998, the Petition to Revoke Probation, Case No. D1-94-40897, was made and filed on behalf of Ron Joseph in his official capacity as Executive Director, Medical Board of California, Department of Consumer Affairs, State of California (hereinafter Medical Board).

2. On or about November 6, 1998, respondent Charles Johnson, M.D., filed a Notice of Defense, requesting a hearing in order to present his defense to the charges contained in the Petition to Revoke Probation.

3. On or about July 26, 1990, the Medical Board issued physician and surgeon's certificate no.G-69296 to Charles Lynnwood Johnson, M.D. (hereinafter respondent). Respondent's medical certificate is currently suspended under the terms and conditions of the disciplinary order that became effective on June 30, 1997, as described hereinbelow. Said certificate expires on May 31, 2000.

4. Effective on June 30, 1997, in the Matter of the Accusation Against Charles L. Johnson, M.D., Case No. 09-94-40897, the Division of Medical Quality of the Medical Board (hereinafter Division) ordered the revocation of respondent's certificate, stayed the revocation order, and placed respondent on probation for seven years under certain terms and conditions for unprofessional conduct, including gross negligence, incompetence, and repeated acts of negligence.

5. Under the Decision and Order in Case No. 09-94-40897, the Division ordered that respondent's certificate be placed on probation subject, in part, to the following terms and conditions:

- a. Condition No. 2 [Quarterly Reports] "Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation."
- b. Condition No. 4 [Interviews with the Division] "Respondent shall appear in person for interviews with the Division, its designee or its designated physician(s) upon request at various intervals with reasonable notice."
- c. Condition No. 7[Violation of Probation] "If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final"
- d. Condition No. 8 [Cost Recovery] "The respondent is hereby ordered to reimburse the Division the amount of \$9,725 within 180 days from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Division's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Division agrees in writing to payment by an installment plan because of financial hardship. The filing of bankruptcy by the respondent shall not relieve the

respondent of his/her responsibility to reimburse the Division for its investigative and prosecution costs.”

e. Condition No. 10 [Probation Monitoring Costs] “Respondent shall pay the monetary costs associated with monitoring his probation each and every year of probation. Such costs shall be payable to the Division at the end of each fiscal year and upon presentation to respondent of a statement of the costs of probation. Failure to pay such costs shall be considered a violation of probation.”

f. Condition No. 11 [(Clinical Training Program)] “Within 90 days of the effective date of this decision, respondent shall submit to the Division or its designee for prior approval, a clinical training program. The exact number of hours and specific content of the program shall be determined by the Division or its designee. Respondent shall successfully complete the training program and may be required to pass an examination administered by the Division or its designee related to the program’s contents.

“Respondent’s practice of medicine shall be restricted to the clinical training program and he shall not practice medicine outside the training program until such time as he has successfully completed the training program. If the Division in its discretion requires respondent to pass an examination related to the program’s content, respondent shall not practice medicine until he has passed the examination and has been notified by the Division or its designee that he has passed the examination.”

6. On June 30, 1997, respondent met with his probation monitor, an investigator with the Medical Board. Respondent received a copy of the Decision in Case No. 09-94-40897 and an explanation of all of the terms and conditions of his disciplinary order. Respondent acknowledged receipt of the Decision and that he understood the terms and conditions of his probation.

7. Quarterly Reports (A) On June 30, 1997, respondent was advised and made aware of the condition that he file quarterly reports under penalty of perjury on forms provided by the Division in which he was to state whether he has complied with all of the conditions of probation. Respondent was provided with blank affidavits and the dates by which the quarterly reports were due. Respondent acknowledged he understood this condition and that the failure to comply with this reporting condition was a violation of probation.

(B) On September 5, 1997, respondent timely submitted to the Division the quarterly report or declaration under penalty of perjury for the reporting period of June 1 through August 31, 1997.

(C) Subsequently, respondent failed to timely submit to the Division the quarterly reports or declarations under penalty of perjury for the following reporting periods: the report for the period of September 1 to November 30, 1997, that was due on December 7, 1997; the report for the period of December 1, 1997, to February 28, 1998, that was due on March 7, 1998; the report for the period of March 1, 1998, to May 31, 1998, that was due on June 7, 1998; and the report for the period of June 1, 1998, to August 31, 1998, that was due on September 7, 1998.

(D) On November 23, 1988, after the filing of the instant Petition to Revoke Probation, respondent filed the four delinquent quarterly reports described in Finding 7(C) above. His submission of the four quarterly reports on said date was late and not timely. Respondent violated Condition No. 2 of the terms and conditions of his disciplinary order.

8. Cost Recovery (A) On June 30, 1997, respondent was advised he was required to reimburse the Medical Board for its investigative and prosecution costs in the amount of \$9,725 within 180 days of the effective date of the Decision. The Medical Board initially agreed to allow respondent to pay \$162.99 per month for 60 months to reimburse the Medical Board and that he could begin payments one year later on June 7, 1998. Shortly thereafter, on or about July 9, 1997, respondent requested that he be allowed to make quarterly payments of \$486.27. The Medical Board agreed that respondent could make quarterly installment payments of cost recovery beginning on June 7, 1998.

(B) Respondent failed to make the first quarterly payment of cost recovery on June 7, 1998, and failed to make any quarterly payments of cost recovery thereafter. Respondent has not paid any amount of cost recovery to the Medical Board. As such, respondent has violated Condition No. 8 of the terms and conditions of his disciplinary order by failing to reimburse the Medical Board for its investigative and prosecution costs.

9. Probation Monitoring Costs (A) On June 30, 1997, respondent was advised that he was required to pay the monetary costs associated with monitoring his probation each year. Respondent was made aware that he would receive each December an annual bill from the Medical Board for the probation monitoring costs which would then be due and payable no later than the end of the next month or January 31st. Respondent was further advised that the annual bill for probation monitoring costs would be approximately \$2,300 and would be pro-rated for the first year of probation.

(B) Respondent has failed to pay any probation monitoring costs for which he has been billed by the Medical Board. As such, respondent has violated Condition No. 10 of the terms and conditions of his disciplinary order.

10. Clinical Training Program (A) On June 30, 1997, respondent was advised and made aware that he was required by the terms and conditions of his disciplinary order to submit a plan for a clinical training program to the Division or its designee for approval

within 90 days. Respondent was advised that the Division's designee was the Physician Assessment and Education Program (PACE program) at the University of California San Diego (hereinafter UC San Diego) which would determine the number of hours and content of the clinical training program. On July 7, 1997, the Medical Board forwarded a copy of the Decision and underlying accusation to the PACE program and instructed respondent to contact the program for an initial assessment.

(B) In a letter to the PACE program dated July 8, 1997, respondent acknowledged he was required to pay a fee of \$1,900 to undergo the two-day initial assessment. He asked what would the clinical training itself cost and indicated he could attend the clinical training program only on a part-time basis while commuting to UC San Diego from Los Angeles. Respondent asked about financing to pay the assessment and clinical training fees.

(C) On July 9, 1997, the assistant director of the PACE program advised respondent that the cost of the clinical training could only be figured after he underwent the two-day assessment and, based on the findings, the program determined the appropriate content of the clinical training. On July 14th, respondent filed an application to enter the PACE program but gave a limited consent and release in which he refused to release to the Medical Board all documents and information from any physical, psychological, or psychiatric examinations obtained from the assessment and clinical program. In a letter with his application, respondent stated that he felt the Medical Board and the PACE program were collaborating with each other and he had no choice but to submit to the PACE program.

(D) On October 3, 1997, the Medical Board informed respondent he had not submitted his plan for clinical training by the due date of September 30th. The Medical Board nevertheless granted respondent an extension until November 15th and, because he felt there was collaboration between the Medical Board and PACE, encouraged respondent to find another designee instead of the PACE program to determine the content of the required clinical training program. Respondent was advised his failure to submit a plan for clinical training by November 15th would constitute a violation of his probation.

(E) On October 4, 1997, respondent notified both the Medical Board and the PACE program that he wanted the PACE program to be the designee for determining the content of the clinical training program. Respondent stated he had filed his application with PACE but had not heard from the program; he indicated, however, he could not afford to pay the assessment or clinical training fees anyway and needed financing. Respondent asked for a "stay" of the probationary condition for clinical training until he had financial means to pay the fees.

(F) On October 7, 1997, the Medical Board informed respondent that the PACE program would not meet his terms for participating in the program; specifically, his limited release was not acceptable, his request for the cost of the clinical training was

premature, and his request for financing and part-time attendance could not be accommodated. The Medical Board suggested respondent find another designee or provider for the clinical training and reminded him that his plan for clinical training had to be submitted by November 15th.

(G) On December 16, 1997, the PACE program wrote respondent that it had been trying to contact him and requested that he call. On January 9, 1998, the PACE program advised respondent that it would close his application unless he called the program. On January 14th, respondent replied he had filed a writ of mandate to overturn the Medical Board's disciplinary order and asked the PACE program not to close his application and to provide him with a written proposal for clinical training.

(H) On February 9, 1998, the Medical Board advised respondent that he had not participated in the PACE assessment program or submitted his plan for clinical training by November 15th. The Medical Board told respondent that, unless he was enrolled in the PACE assessment program by February 20th, action would be taken to revoke his probation. Respondent was told no further extensions would be granted.

(I) On February 10, 1998, respondent replied to the Medical Board he was still seeking a court order to stay his disciplinary order. He indicated he was a pauper and could not pay the PACE assessment or clinical training fees. He asked the Medical Board not to enforce the disciplinary order until completion of his litigation. Respondent offered to take a medical knowledge self-assessment program in lieu of any clinical training.

(J) On February 23, 1998, the PACE program advised the Medical Board that respondent had not enrolled in the clinical training program.

11. (A) On July 22, 1998, the Medical Board's probation monitor scheduled a meeting for August 11th to discuss respondent's compliance with his probationary order. Respondent refused to attend the meeting until the resolution of his petition for writ of mandate.

(B) On August 18, 1998, the probation monitor tried to reschedule the meeting for August 28th to give respondent a chance to comply with his probationary order. The probation monitor informed respondent his probationary order was in effect and his offer to take a medical knowledge self-assessment program in lieu of the clinical training program was not acceptable. Respondent replied he would not be present for the meeting because he was waiting for the court hearing on his writ of mandate petition. He indicated his belief that the probationary program was oppressive and he did not have the money to pay the fees to enter the clinical training program or the Medical Board's costs of \$9,725.

(C) On September 4, 1998, the probation monitor scheduled a meeting for a third time for September 10th. On the date of meeting, respondent advised the probation

monitor he was unable to leave his work and asked that it be reset for September 17th. The Medical Board agreed to the change of date of the meeting.

(D) On September 17, 1998, respondent met with his probation monitor who advised him that he was in violation of the disciplinary order for failing to file four quarterly reports, pay past due cost recovery in the amount of \$972.54 and past due probation monitoring costs for 1997 in the amount of \$1,167.78, and enroll in the assessment to commence the clinical training program at PACE. The probation monitor set a deadline for compliance for September 21st. Respondent replied he could not comply because he was going out of town, had no money, and was busy with his litigation.

(E) On September 21, 1998, respondent failed to come into compliance with all of the terms and conditions of his probationary order pursuant to the extension provided by his probation monitor.

12. On October 28, 1998, the Superior Court of Los Angeles County denied respondent's writ of mandate and ordered that he pay statutory costs to the Medical Board. At no relevant time herein has any court of competent jurisdiction granted respondent's petition for writ of mandate or stayed the disciplinary order or these proceedings. The subject disciplinary order has been in effect since June 30, 1997.

13. Based on Findings 4-10 above, respondent violated the terms and conditions of his probation by failing to file timely quarterly reports [Condition No. 2], failing to make any quarterly payments of cost recovery [Condition No. 8], failing to pay the probation monitoring costs for 1997 [Condition No. 10], and failing to submit a plan for and completing a clinical training program [Condition No. 11].

14. Based on Findings 4-6 and 11 above, on August 11 and 28 and September 10, 1998, respondent violated Condition No. 4 of his probation by failing to appear for interviews with the Division or its designee upon request with reasonable notice.

15. From November 1996 until March 1997, respondent was not working and receiving unemployment benefits. In or about June 30, 1997, when he first met with his probation monitor, respondent obtained a job as an office administrator with Arthur Anderson. In or about October 1997, he quit his job at Arthur Anderson in order to file his petition for writ of mandate and to challenge the disciplinary order in court. From June 1998 until November 1998, respondent worked in a temporary position at Ernst and Young. From December 1998 until April 1999, he worked as a secretary at a children's hospital. Currently, he works for a job services company.

16. Respondent has not practiced medicine in this state for the past five years or since 1994. He has made a living working as an office or administrative assistant.

17. Respondent has submitted bank and income tax statements and other documents which demonstrate that he is not a person of great means. In 1998, his taxable income was \$18,089. In 1993, he states he filed a petition for bankruptcy. However, it was not established that respondent's modest income or resources constituted a mitigating circumstance which excused him from complying with the terms and conditions of his Medical Board probation.

18. At the hearing in this matter, respondent admitted that he filed delinquent quarterly reports and still owes cost recovery and probation monitoring costs to the Medical Board. He admitted he has not participated in the initial assessment or enrolled in the clinical training program at PACE. Respondent continues to say he is impoverished and lacks the funds to pay any costs or undertake any clinical training. Since the hearing, no evidence has been filed or received showing respondent has come into compliance with the terms and conditions of his probation.

19. The reasonable costs of investigation and enforcement of this matter total \$5,198.24. [Exh. 8]

* * * * *

Based on foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

CONCLUSIONS OF LAW

1. Grounds exist to revoke respondent's probation pursuant to Business and Professions Code Section 2234 for unprofessional conduct in that respondent violated the terms and conditions of his disciplinary order, based on Findings 13 and 14 above.

2. Grounds exist to revoke respondent's probation pursuant to Business and Professions Code Section 2227 and Condition No. 7 of his disciplinary order in that respondent violated Conditions Nos. 2, 4, 8, 10, and 11 of his disciplinary order, based on Findings 13 and 14 above.

3. It was not established that there were any mitigating or extenuating circumstances to respondent's violations of the terms and conditions of his probation. Respondent has demonstrated an uncooperative and recalcitrant attitude toward his disciplinary order. He has been provided with several opportunities to come into compliance but refuses to do so. As such, respondent has demonstrated he is not a viable candidate for continued probation. Public interest and welfare require that the stayed disciplinary order of revocation be enforced at this time.

4. Grounds exist under Business and Professions Code Section 123.5 to direct respondent to pay the Medical Board the reasonable costs of investigation and enforcement, based on Conclusions of Law Nos. 1 and 2 and Finding 19 above.

* * * * *

WHEREFORE, the following Order is hereby made:

ORDER

1. The Petition to Revoke Probation, Case No. D1-94-40897, issued by the Division of Medical Quality, Medical Board of California, is sustained. Physician and Surgeon's Certificate No. G-69296 previously issued by the Medical Board of California to respondent Charles L. Johnson, M.D., is revoked.

2. Respondent Charles L. Johnson, M.D., is directed to pay costs of investigation and enforcement in the amount of \$5,198.24 to the Medical Board of California.

DATED: Oct. 26, 1999

V. Nafarrete
Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

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9 **BEFORE THE**
10 **DIVISION OF MEDICAL QUALITY**
11 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

12 In the Matter of the Petition to Revoke Probation)
Against:)

13 **CHARLES JOHNSON, M.D.**)
14 503 N. Oakland Avenue)
Pasadena, CA 91101-1111)

15 Physician's and Surgeon's)
16 Certificate No. G-69296,)

17 Respondent.)
18

Case No. D1-94-40897

**PETITION TO REVOKE
PROBATION**

19 The Complainant alleges:

20 **PARTIES**

21 1. Complainant, Ron Joseph, is the Executive Director of the Medical
22 Board of California (hereinafter the "Board") and brings this petition to revoke probation
23 solely in his official capacity.

24 2. On or about July 26, 1990, Physician's and Surgeon's Certificate No.
25 G-69296 was issued by the Board to Charles Johnson, M.D. (hereinafter "respondent").
26 Respondent had not complied with the Continuing Medical Education requirements when
27 he renewed his license in 1998. Respondent requested a one time waiver. His request

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *October 26* 19 *98*
BY *Ramona S. Mosher* ANALYST

1 was denied. However, the Division of Licensing has permitted respondent to make up the
2 deficient hours during the next biennial renewal period. If respondent does not comply
3 with the CME requirements by his next renewal, he will be ineligible for renewal until
4 the required hours are documented to the Division of Licensing. Respondent's certificate
5 is valid with an expiration date of May 31, 2000.

6 Disciplinary action was taken against respondent's certificate. On or about
7 June 30, 1997, a Decision became effective revoking respondent's certificate, however,
8 the revocation was stayed and respondent was placed on seven years probation with terms
9 and conditions. Respondent has failed to meet a pre-condition of practice set forth in the
10 Decision; therefore, his certificate is in a suspended status.

11 JURISDICTION

12 3. This accusation is brought before the Division of Medical Quality of
13 the Medical Board of California Department of Consumer Affairs (hereinafter the
14 "Division"), under the authority of the following sections of the California Business and
15 Professions Code (hereinafter "Code"):

16 A. Section 2227 provides that the Board may revoke, suspend for a
17 period not to exceed one year, or place on probation and order the payment of probation
18 monitoring costs, the license of any licensee who has been found guilty under the Medical
19 Practice Act.

20 B. Section 2234 provides that unprofessional conduct includes, but is
21 not limited to, the following:

22 "(a) Violating or attempting to violate, directly or indirectly,
23 or assisting in or abetting the violation of, or conspiring to violate, any
24 provision of this chapter.

25 "(b) Gross negligence.

26 "(c) Repeated negligent acts.

27 "(d) Incompetence.

1 "(e) The commission of any act involving dishonesty or
2 corruption which is substantially related to the qualifications, functions, or
3 duties of a physician and surgeon.

4 "(f) Any action or conduct which would have warranted the
5 denial of a certificate.

6 ". . . ."

7 5. By a Decision effective June 30, 1997, in Case No. 09-94-40897,
8 respondent's license was revoked. Revocation was stayed, and he was placed on
9 probation for a period of seven years with terms and conditions. The relevant terms and
10 conditions for purposes of this Petition to Revoke Probation are the following:

11 **"Paragraph 2 (Quarterly Reports)** Respondent shall
12 submit quarterly declarations under penalty of perjury on forms provided by
13 the Division, stating whether there has been compliance with all the
14 conditions of probation.

15 **"Paragraph 4 (Interview with the Division, its Designee or**
16 **Its Designated Physician(s))** Respondent shall appear in person for
17 interviews with the Division, its designee or its designated physician(s)
18 upon request at various intervals with reasonable notice.

19 **"Paragraph 7 (Violation of Probation)** If respondent
20 violates probation in any respect, the Division, after giving respondent
21 notice and the opportunity to be heard, may revoke probation and carry out
22 the disciplinary order that was stayed. If an accusation or petition to revoke
23 probation is filed against respondent during probation, the Division shall
24 have continuing jurisdiction until the matter is final, and the period of
25 probation shall be extended until the matter is final.

26 **"Paragraph 8 (Cost Recovery)** The respondent is hereby
27 ordered to reimburse the Division the amount of \$9,725 within 180 days

1 from the effective date of this decision for its investigative and prosecution
2 costs. Failure to reimburse the Division's cost of its investigation and
3 prosecution shall constitute a violation of the probation order, unless the
4 Division agrees in writing to payment by an installment plan because of
5 financial hardship. The filing of bankruptcy by the respondent shall not
6 relieve the respondent of his/her responsibility to reimburse the Division for
7 its investigative and prosecution costs.

8 **"Paragraph 10 (Probation Monitoring Costs)** Respondent
9 shall pay the monetary costs associated with monitoring his probation each
10 and every year of probation. Such costs shall be payable to the Division at
11 the end of each fiscal year and upon presentation to respondent of a
12 statement of the costs of his probation. Failure to pay such costs shall be
13 considered a violation of probation.

14 **"Paragraph 11 (Clinical Training Program) "** Within 90
15 days of the effective date of this decision, respondent shall submit to the
16 Division or its designee for prior approval, a clinical training program. The
17 exact number of hours and specific content of the program shall be
18 determined by the Division or its designee. Respondent shall successfully
19 complete the training program and may be required to pass an examination
20 administered by the Division or its designee related to the program's
21 contents.

22 Respondent's practice of medicine shall be restricted to the clinical training
23 program and he shall not practice medicine outside the training program and may
24 be required to pass an examination administered by the Division or its designee
25 related to the program's content.

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PRAYER

WHEREFORE, complainant requests that the Division hold a hearing on the matters alleged herein, and that following the hearing, the Division issue a decision:

1. Revoking Physician's and Surgeon's Certificate No. G-69296, heretofore issued to respondent Charles Johnson, M.D.;

2. Imposing the stayed discipline (i.e. revocation) from the Division's Decision in Case No. 09-94-40897;

3. Ordering respondent to pay the Board the actual and reasonable costs of the investigation and enforcement of this case; and

4. Taking such other and further action as the Division deems appropriate to protect the public health, safety and welfare

DATED: October 26, 1998



Douglas Lane
Ron Joseph
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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